



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0014]

RIN 1625-AA00

Safety Zone; Pago Pago Harbor, American Samoa

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for Pago Pago Harbor, American Samoa during the April 17, 2014 Fautasi Race. This action is necessary for the safeguard of participants and spectators, including all crews, vessels, and persons on the navigable waters during the Fautasi Races (canoe boat races) that will occur in Pago Pago Harbor. This safety zone will functionally close the port to vessel traffic during the race, but will not require the evacuation of any vessels from the harbor. Entry into, transiting or anchoring in this safety zone is prohibited to all vessels not registered with the sponsor as participants or not part of the race patrol, unless specifically authorized by the Captain of the Port Honolulu or a designated representative.

DATES: This safety zone is effective from 7:30 a.m. to 8:30 a.m. (SST) on April 17, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2014-0014. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Commander Scott Whaley of the United States Coast Guard Sector Honolulu at 808-541-4359 or Scott.O.Whaley@uscg.mil, respectively. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
TFR	Temporary Final Rule
COTP	Captain of the Port

A. Regulatory History and Information

The Coast Guard is establishing this TFR without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the Federal Register. The specific details of the Fautasi Race were not determined until less than a month before the race was scheduled to be held. Due to the need to restrict vessel traffic during the race, in order to protect the participants, spectators, Marine Patrol and the race officials, a 30-day notice period is impracticable. The Captain of the Port (COTP) Honolulu finds that this safety zone is required on April 17, 2014, to ensure the safety of the participants, spectators, Marine Patrol and the race officials.

B. Basis and Purpose

The statutory basis for this rulemaking is 33 U.S.C. 1231, which gives the Coast Guard, under a delegation from the Secretary of Homeland Security, regulatory authority to implement the Ports and Waterways Safety Act. A safety zone is a water

area, shore area, or water and shore area, for safety or environmental purposes, access is limited to authorized persons, vehicles, or vessels.

The purpose of this rule is to minimize vessel traffic during the Fautasi canoe race. This race is a hugely popular event attended by a vast majority of American Samoa residents and is sponsored by American Samoa Government. This event is expected to draw a large number of pleasure craft, posing a significant hazard to both vessels and mariners operating in or near the area. The COTP Honolulu is establishing a safety zone for Pago Pago Harbor to accommodate these events and to safeguard persons and vessels during the canoe boat race. The legal basis and authorities for this temporary final rule are found in 33 U.S.C. 1231 and 33 CFR part 165, which authorizes the Coast Guard to propose, establish, and define safety zones. The COTP anticipates minimal impact on vessel traffic due to this safety zone. However, the safety zone is deemed necessary for the safeguard of life and property within the safety zone.

C. Discussion of the Rule

This rule creates a safety zone for Pago Pago Harbor. The Coast Guard is banning the transit of all commercial vessel through the harbor that are not authorized by the COTP or a designated support or enforcement vessel for the event, effectively closing the port for commercial vessels. The harbor

will remain closed until the Coast Guard issues an "All Clear" for the harbor after the race has concluded the harbor is deemed safe for normal operations. This temporary rule does not require any vessel to evacuate the port if moored; it only bans the transit through the zone during the aforementioned times. An illustration of the safe zone is available in the online docket.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The expected short duration and impact of the rule ensures it will not rise to the level a significant regulatory action.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the

potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit, anchor or moor within Pago Pago Harbor American Samoa between 7:30 a.m. and 8:30 a.m. (SST) on April 17, 2014.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: this safety zone is of limited duration and intended to protect Pago Pago Harbor for continued use by these small entities and others following the completion of the canoe race. Once the race has concluded, the safety zone will be cancelled allowing vessels to transit the harbor in accordance with already established regulations.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the

FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland

Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the closure of the port to all traffic. This rule is categorically excluded from further review under paragraph 34g of Figure 2-1 of the Commandant Instruction.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T14-0014 to read as follows:

§ 165.T14-0014 Safety Zone; Pago Pago Harbor, America Samoa.

(a) Location. The following area is a safety zone: all waters encompassed by a line starting at Breakers Point (eastern edge of Pago Pago Harbor entrance) thence southeast to 14° 18'47"S, 170° 38'54.5"W thence southwest to 14° 19'03"S, 170° 39'14"W, thence northwest to Tulutulu Point and then following the Pago Pago Harbor coastline back to the point of origins. This safety zone extends from the surface of the water to the ocean floor.

(b) Enforcement period. This section will be enforced from 7:30 a.m. TO 8:30 a.m. (SST) on April 17, 2014.

(c) Regulations. (1) All persons and vessels not registered with the sponsor as participants or support/enforcement vessels are considered spectators. The "support/enforcement vessels" consist of any territory, or local law enforcement and sponsor provided vessels assigned or approved by the COTP Honolulu to patrol the safety zone.

(2) No spectator shall anchor, block, loiter or impede the transit of participants or support/enforcement vessels in the safety zone while this section is effective, unless cleared by or through a support/enforcement vessel.

(3) Spectator vessels may be moored to a waterfront facility within the safety zone in such a way that they shall not interfere with the progress of the events. Such mooring must be complete at least 30 minutes prior to the

effective period of this section and remain moored through the duration of the events.

(d) Informational Broadcasts. The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule. Once the zone is being enforced, due to the commencement of the race, transiting, anchoring, and loitering in the harbor is forbidden and the harbor will remain closed until 8:30 a.m., or earlier if the Coast Guard issues an "All Clear" after the race has concluded and the harbor is deemed safe for normal operations.

Dated: March 25, 2014

S. N. GILREATH
Captain, U.S. Coast Guard
COTP Honolulu

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